



4000-01-U

DEPARTMENT OF EDUCATION

[Docket ID ED-2013-OSERS-0083]

American Indian Vocational Rehabilitation Services Program;  
Notice of Tribal Consultation and request for comments

AGENCY: Rehabilitation Services Administration, Office of  
Special Education and Rehabilitative Services, Department  
of Education.

ACTION: Notice.

SUMMARY: The Department seeks input from tribal officials,  
tribal governments, tribal organizations, and affected  
tribal members on the Department's interpretation of the  
term "reservation" in section 121(c) of the Rehabilitation  
Act of 1973, as amended (Act). The Department is also  
exploring additional measures of consultation, including  
regional face-to-face meetings to be held in August and  
September of 2013.

DATES: The Department must receive your comments on or  
before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN  
THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal  
eRulemaking Portal or via postal mail, commercial delivery,  
or hand delivery. We will not accept comments submitted by  
fax or by email or those submitted after the comment

period. To ensure that we do not receive duplicate copies, please submit your comments only once.

In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this notice, address them to August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 5049, Potomac Center Plaza (PCP), Washington, DC 20202-2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: August Martin.

Telephone: (202) 245-7410, or by email:

[august.martin@ed.gov](mailto:august.martin@ed.gov)

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: The Rehabilitation Services Administration (RSA) invites you to submit comments regarding this notice. Specifically, we invite comments regarding the effect of a possible change in how the Department interprets the definition of the term "reservation" that is used to determine eligibility for a grant under the American Indian Vocational Rehabilitation Services (AIVRS) program.

Assistance to Individuals with Disabilities in Reviewing the Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for this notice of tribal consultation. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background:

On May 9, 2012, the U.S. Government Accountability Office (GAO) released a report, "Federal Funding for Non-Federally Recognized Tribes," GAO-12-348 (available at [www.gao.gov/products/GAO-12-348](http://www.gao.gov/products/GAO-12-348)), in which a question was raised concerning the Department's practice for determining eligibility under the AIVRS program.

In this report, the GAO questioned whether the Department's interpretation of the term "reservation," when used in determining eligibility for grants under the AIVRS program, was broader than the term's statutory definition. Specifically, the GAO noted that there are substantial questions about the eligibility for AIVRS program grants of State-recognized tribes that are not located on State reservations but on a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, such as the tribal service areas identified in a tribe's grant application. The GAO recommended that the Secretary review the eligibility requirements for AIVRS grants and take appropriate action on grants made to tribes that do not have Federal or State reservations.

Therefore, the Department seeks input from tribal officials, tribal governments, tribal organizations, and affected tribal members regarding a possible change in the Department's interpretation of "reservation," as that term is used in determining AVIRS program grant eligibility, and that would align with the GAO interpretation and include only those areas of land specifically listed in the statutory definition.

This notice complies with Executive Order 13175, which requires tribal consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.

The Definition of "Reservation":

Section 121(a) of the Act (29 U.S.C. 741) provides that eligible applicants for an AIVRS grant are the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies). Section 121(c) of the Act further provides that the term "reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act. In

its regulations in 34 CFR 371.4(b), the Department defines "reservation" as "a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act."

In interpreting the term "reservation," the Department has included tribes that are located on a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, such as the tribal service areas identified in a tribe's grant application. Because the statutory definition of "reservation" uses the term "include," the Department has interpreted the term to mean that the list of land areas in the statutory definition is not exhaustive; and, as a result, the Department has the authority to include other land areas that are consistent with both the purpose of the program and the list of land areas provided in the statute.

The Department is considering narrowing its interpretation of the statutory definition of "reservation" to align with the GAO interpretation, which would include only those areas of land specifically listed in the statutory definition -- Indian reservations, public domain

Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

With this possible change, federally recognized tribes without Federal reservations and State recognized tribes without State reservations (or other areas of land specifically listed in the statutory definition of "reservation") would no longer be eligible to apply for grants under the AIVRS program.

Therefore, the Department is seeking comments that address three areas:

(1) The Department is interested in the potential effect of limiting eligibility for AVIRS program grants to those Indian tribes (and consortia of tribes) located on Federal and State reservations and the other land areas specifically listed in the statutory definition of "reservation."

(2) For tribes that currently provide services under this program and that would not meet the revised interpretation of "reservation," the Department is particularly interested in whether individuals currently receiving services from these tribes would continue to receive vocational rehabilitation services to assist them

to return to work; and, if so, how and where the clients might obtain these services.

(3) The Department is also interested in how a revised interpretation of "reservation" would affect the pool of potential applicants for the AIVRS program, including tribes that have not previously applied but may consider applying for an AIVRS grant.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.



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Dated: July 1, 2013

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Michael K. Yudin,  
Delegated the authority  
to perform the functions  
and duties of the Assistant  
Secretary for Special  
Education and  
Rehabilitative Services.

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